at that time. The learned Magistrate sentenced him to two years' imprisonment and ten strokes of the rattan. The accused has no less than ten previous convictions during the course of the last ten years, eight of which have been for theft. Whilst the sentence of imprisonment is undoubtedly severe, having regard to his previous criminal record I am quite unable to say that it is too severe, and I do not propose to interfere with it.

As to the sentence of corporal punishment, however, the High Court has laid it down on a number of occasions that whilst it is legally within the power of a Magistrate to impose corporal punishment upon a conviction for an offence of this nature, the modern tendency in penal procedure and reform is against the imposition of corporal punishment on adults, except in cases involving violence — See the decisions of Mathew C.J. and Buhagiar J. in the cases of *Endut bin Bakar v. Public Prosecutor*[1] and *Mohamed Ali v. Public Prosecutor*[2]. Both these decisions were briefly referred to in the Monthly Bulletin of Written Judgments of the Supreme Court in Criminal matters dated the 17th April, 1956 circulated to all Magistrates.

There was no question of any violence in connection with the commission of this offence. The sentence of corporal punishment is accordingly set aside. The terms of imprisonment, as I have said, is confirmed.

Order accordingly.

PUBLIC PROSECUTOR v. TAY YEW LIA

[A. Cr. J. (Good J.) September 8, 1956]

[Muar — Criminal Appeal No. 5 of 1956]

Customs Ordinance, 1952, ss. 115 & 131(2) — Knowingly being in possession of uncustomed goods — Presumption — Rebuttal.

In this case the facts were that on a search of the respondent's shop in Muar a Customs Officer found 73 packs of playing cards. The respondent was charged for being knowingly in possession of uncustomed goods. He was acquitted and the Public Prosecutor appealed. On appeal reliance was placed on the presumption in section 131(2) of the Customs Ordinance, 1952 which provides that "in any prosecution under this section any uncustomed goods shall be deemed to be uncustomed goods to the knowledge of the defendant unless the contrary be proved by such defendant." It was argued that unless a person had reason to believe that the duty had been paid he cannot be said not to know it has not been paid.

Held: (1) what the defendant had to prove to rebut the presumption under section 131(2) of the Customs Ordinance, 1952 was that he does not know the duty has not been paid;

(2) in this case the respondent had succeeded in rebutting the presumption and therefore was rightly acquitted.

MAGISTRATE'S CRIMINAL APPEAL.

Bahaudin bin Yacob (Federal Counsel) for the appellant.

Respondent in person.

Good J. : — A question of interpretation, which to the best of my knowledge has not previously been decided in the precise form that it takes here, arises on this appeal.

The respondent is a shopkeeper in Muar. On a search of his premises by a customs officer 73 packs of playing cards were discovered. Although the majority of them were wrapped in newspaper there is no suggestion that they had been hidden: 60 packs wrapped in newspaper were in a glass case in the shop and the remaining 13 packs were on a shelf. On a charge of being knowingly in possession of uncustomed goods the shopkeeper was acquitted, and the Public Prosecutor appealed.

The effect of section 115 of the Customs Ordinance, 1952, is that if a customs officer finds a person in possession of dutiable goods anywhere in the Federation he can take him to Court and make him prove that the duty has been paid, or make him rebut the presumption of knowledge which is created by section 131(2). It is the interpretation of the latter sub-section which is in question here. For the sake of brevity I am treating uncustomed goods, for the purposes of this appeal, as dutiable goods which have been "smuggled" into the Federation, that is, imported without the import duty having been paid. The definition of "uncustomed goods" in the Ordinance is, of course, wider than this.

The principle underlying the argument of the appellant seems to be that a person who acquires dutiable goods honestly in the ordinary course of business ought to have no difficulty in tracing the goods back to the time and place of importation and showing that import duty has been paid: in which case the Customs, if satisfied of the genuineness of his explanation and the proof of it, would not have to resort to proceedings in Court. If "A" buys a bottle of whisky from a shop in Johore Bahru, and the Customs demand proof that the duty has been paid on it "A" can refer them to the shop where he bought it and the shopkeeper will no doubt be able to satisfy them that it was part of a consignment imported by an importing house in Singapore from which he bought it wholesale in the ordinary course of business. But the appellant's argument in this appeal is that if "A" chooses to buy a bottle of whisky from a person whom he does not

know, for example in the street, he has only himself to blame if he cannot prove that the import duty has been paid and if he cannot rebut the presumption under section 131(2).

I have to consider the true meaning of that presumption and I have come reluctantly to the conclusion that there is at least a possibility of some ambiguity in the wording of it. The relevant words of the sub-section are :—

". . . . in any prosecution under this section . . . . any uncustomed goods . . . . shall be deemed to be uncustomed . . . . goods . . . . to the knowledge of the defendant unless the contrary be proved by such defendant."

The question is : what is meant by "the contrary"? The affirmative proposition which the defendant has to rebut is :—

"These goods are uncustomed to the knowledge of the defendant."

Now, what must the defendant prove, in order to discharge the onus of proving the contrary of that proposition? Does he have to prove :—

(a) that he does not know that the duty has not been paid; or

(b) that he knows that the duty has been paid?

These are two very different propositions, demanding two very different standards of proof.

Let us take an example : a man approaches "A" in the street and offers to sell him some playing cards. "A" happens to need some playing cards and he likes the look of the ones that are offered to him. There is nothing suspicious about the price which the seller asks. "A" makes no enquiries as to where seller got them from and he buys them without question. "A" is then prosecuted for knowingly being in possession of uncustomed goods. He explains the circumstances to the Court. The Court considers his explanation so probable that a reasonable man ought, under the circumstances of the case, to act upon the supposition that it is true. Can it be said that he has failed to discharge the onus of proof because he has not proved that he knew that the duty had been paid (which, obviously, he cannot do if he cannot trace the seller)?

The learned Deputy Public Prosecutor urged upon me the view that unless a person has reason to believe that the duty has been paid he cannot be said not to know that it has not been paid. This seems to me to stretch the wording of the sub-section beyond its expressed intention : nothing is said about "reason to believe", and it would have been an easy matter to provide for it if it had been intended. If a person can satisfy the Court, in accordance with the standard of proof laid down in the Evidence Ordinance, that he did not know whether the duty had been paid or not, then, surely, he has proved the contrary of the proposition that he knew that the duty had not been paid.

Of the two possible interpretations of section 131(2), which I have designated (a) and (b) above, I prefer (a) as operating less stringently against the subject. This is in accordance with an accepted canon of interpretation.

If the sub-section had been intended to put the purchaser upon inquiry and to make him liable unless he proves that he had reason to believe that the duty had been paid, it could and should have been worded differently. As it stands, it only requires the defendant to satisfy the Court that he did not in fact know that the duty had not been paid, which the respondent succeeded in doing in this case.

In these circumstances I dismiss the appeal.

Appeal dismissed

TAN JOO ENG (m.w.) v. SIANG HENG CO. LTD. & ORS.

[C. A. (Whyatt C.J., Mathew C.J. (F.M.) and Knight J.) October 12, 1956]

[Singapore — Civil Appeal No. 7 of 1956]

Landlord and Tenant —Whether a sub-tenant can be affected by order for possession made without notice to him — Procedure — R.S.C., O. 12 r. 12.

This was an appeal against an order of the High Court allowing the respondents, who claimed to be sub-tenants, to appear and defend, an action for possession, under the provisions of Order 12 r. 12 of the Rules of the Supreme Court. It appeared that the appellant had obtained an order for possession in respect of premises, part of which were in the actual possession of the respondents, without making the respondents parties to the proceedings and without giving them any notice. It was argued that the respondents should have proceeded by way of motion to the Court of Appeal to set aside the judgment. It was also argued that the order allowing the respondents to appear and defend should not have been made, as their affidavits disclosed no merits.

Held: (1) the order giving leave to the respondents to appear and defend the action was rightly made in accordance with the provisions of Order 12 r. 12 of the Rules of the Supreme Court;

(2) it was not necessary for the respondents in their affidavits to deal with the merits of their case. All that they need show was that they were in possession of premises in respect of which an order for judgment had been signed and that they were given no notice of the proceedings before judgment.

Cases referred to :—

(1) *Lewis v. Guntis-Jones* (1949) 119 L.J.R. 769.

(2) *Minet v. Johnson* 6 T.L.R. 417.

(3) *Leicester Permanent Building Society v. Shearly* (1951) 1 Ch. 95.